



# Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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August 7, 2007

Ms. Alexis R. Phillips-Dowell  
Regional Water Quality Control Board  
Central Valley Region  
Fresno Branch Office  
1685 E Street  
Fresno, CA 93706

**RE: Central Valley Clean Water Association's Comments on Tentative Waste Discharge Requirements for City of Kerman Wastewater Treatment Facility, Fresno County**

Dear Ms. Phillips-Dowell:

The Central Valley Clean Water Association ("CVCWA") appreciates the opportunity to provide comments on the tentative waste discharge requirements ("WDRs") for the City of Kerman Wastewater Treatment Facility ("Kerman WWTF") in Fresno County. CVCWA is a nonprofit association of 58 local public agencies providing wastewater collection, treatment and water recycling in the Central Valley. Our comments focus on the proposed groundwater limitations that incorporate maximum contaminant levels ("MCLs") adopted by the Department of Public Health ("DPH") for the regulation of drinking water. The proposed limitations are inappropriate for the following reasons.

First, the proposed groundwater limitations based on MCLs are not supported by the permit findings or evidence in the record. The Regional Water Board must explain permit requirements with specific findings in the WDRs or fact sheet based on evidence in the administrative record. That is, the Regional Water Board must "set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.)

In addition, the proposed groundwater limitations lack the clarity necessary to ensure compliance with the WDRs. The tentative WDRs incorporate by reference MCLs established by another regulatory agency for *drinking water* as the basis for groundwater limitations. However, the tentative WDRs fail to specify whether the groundwater limitations automatically incorporate any *future changes* DPH makes to the MCLs.

Finally, the automatic or prospective incorporation of new or revised MCLs into the groundwater limitations for the Kerman WWTF would be of dubious validity, as such incorporation would eliminate the public participation process for issuance of WDRs, adopt future changes that are unknown and unknowable, and prevent informed judicial review. (See *California Assn. of Nursing Homes v. Williams* (1970) 4 Cal.App.3d 800, 810-811; Notice and Decision Re Approval and Partial Disapproval of a Rulemaking Action (2000) OAL File No. 00-0317-15, p. 6.) Prospective incorporation of future changes to MCLs into the groundwater limitations would also violate Porter-Cologne. (Wat. Code §13000, et seq.) For example, effluent limitations, including those based on MCLs, must be necessary to protect the beneficial uses of the receiving water. While future changes to MCLs may be necessary to prescribe water quality for potable uses, such changes may not be necessary to protect the beneficial uses of the groundwater. Under Porter Cologne, the regional water boards are charged with establishing WDRs, but the proposed groundwater limitations effectively delegate that rulemaking authority to DPH. In this regard, prospective incorporation would also violate the general delegation of powers doctrine, as the Regional Water Board has not provided guidance to DPH on how to adopt MCLs to protect water quality consistent with Porter Cologne and the Basin Plan.

CVCWA respectfully requests that the proposed groundwater limitations be removed from the proposed WDRs. If you have any questions or would like additional information, please contact me at (877) 282-9285.

Sincerely,

Debbie Webster, Executive Officer